

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CIVIL NO.: 20-980 (DSD/LIB)

Norris Deshon Andrews,

Plaintiff,

v.

ORDER

Joel Brott, et al.,

Defendants.

This matter is before the court upon the report and recommendation of the United States Magistrate Judge Leo I. Brisbois dated March 23, 2022 (R&R). The R&R recommends that the court dismiss the action without prejudice as to the Sherburne County Defendants¹ and with prejudice as to the Allina Defendants.² Andrews requested, and the court granted, additional time in which to object to the R&R. ECF Nos. 94, 95. Rather than object, Andrews filed a motion to voluntarily dismiss the case with leave to file a new action in the future. ECF No. 96. He contends that he is unable to adequately prepare his case due to "multiple facility transfers." Id. at 1. As a practical matter, the R&R recommends dismissal of some of the claims without prejudice, so he will be able to file a new action against the Sherburne County

¹ The Sherburne County Defendants include Joel Brott, Captain Zerwas, Captain Bloom, Commander Carr, and Brian Frank.

² The Allina Defendants include Allina Health Fridley Clinic, Juacenita Neft, and Todd Hendrickson.

Defendants should he choose to do so consistent with the Federal Rules of Civil Procedure. As to the Allina defendants, however, the R&R correctly recommends dismissal with prejudice due to Andrews' failure to comply with Minn. Stat. § 145.682, subd. 2, which requires that medical malpractice plaintiffs provide an affidavit of expert review. There is no dispute that Andrews did not provide such an affidavit. As explained in the R&R, his failure to do so requires dismissal with prejudice. See ECF No. 93 at 21; Flores v. U.S., 689 F.3d 894, 900 (8th Cir. 2012) ("[T]he consequence of noncompliance [with Minn. Stat. § 145.682, subd. 2] is dismissal of the claim with prejudice.").

Accordingly, based on a review of the file, record, and proceedings herein, **IT IS HEREBY ORDERED that:**

1. The R&R [ECF No. 93] is adopted in its entirety;
2. Defendants Sherburne County Jail, Joel Brott, Captain Zerwas, Captain Bloom, Commander Carr, and Brian Frank's motion to dismiss [ECF No. 43] is granted and the claims against them are dismissed without prejudice;
3. Defendants Allina Health Fridley Clinic, Jaucenita Neft, and Todd Hendrickson's motion to dismiss [ECF No. 57] is granted and the claims against them are dismissed with prejudice; and

4. The motion to voluntarily dismiss the case with leave to file another lawsuit in the future [ECF No. 96] is denied.

Dated: May 16, 2022

/s David S. Doty
David S. Doty, Judge
United States District Court